BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, as amended;

AND IN THE MATTER OF the complaints by Elizabeth Stojanovski, Catherine Ann Buchan, Anna Boglis, Bonnie Borland and Tara (Carrier) Therien dated February 26, 1992, and of the complaint by Cindy Booth, dated February 27, 1992 alleging discrimination in employment on the basis of sex.

B E T W E E N :

Ontario Human Rights Commission

- and -

Elizabeth Stojanovski, Tara (Carrier) Therien, Anna Boglis, Catherine Ann Buchan, Cindy Booth, and Bonnie Borland

Complainants

- and -

Honeywell Limited and J. B. Baker

Respondents

INTERIM DECISION

Adjudicator : Heather M. MacNaughton

Date : November 28, 1997

Board File No: BI-0133-97, BI-0134-97, BI-0135-97, BI-0136-97, BI-0137-97 and BI-0138-97

Decision No : 97-025-I

Board of Inquiry (*Human Rights Code*)
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APPEARANCES

Ontario Human Rights Commission	)	Naomi Overend, Counsel
Elizabeth Stojanovski, Anna Boglis, Catherine Ann Buchan, Bonnie Borland, Tara (Carrier) Therien and Cindy Booth	)	Catherine Gilbert, Counsel
Honeywell Limited and J. B. Baker	)	Brenda Bowlby, Counsel

1. At the outset of preliminary motions in this matter, I was advised by counsel for all parties that they consented to the removal of J. B. Baker as a Respondent. The style of cause will be amended to name Honeywell Limited ("Honeywell") as the only Respondent.

Motion to Defer Setting Hearing Dates

2. Honeywell seeks a ruling that hearing dates not be set in this matter until the Ontario Divisional Court has decided a pending appeal from the Ontario Board of Inquiry decision in *Crook v. Ontario Cancer Treatment Centre and Research Foundation and Ottawa Regional Cancer Centre* [unreported decision of the Ontario Board of Inquiry, August 26, 1996] and until the Ontario Court of Appeal has decided the appeal in *Re Ontario Secondary Teachers Federation, District 34 v. Essex County Board of Education* [unreported decision of the Divisional Court June 4, 1996]

3. I was advised that the Divisional Court has set the dates of December 18th and 19th, 1997 for argument in the *Crook* case. However, no date has been set for argument of the appeal in the *Essex* case although it has been perfected.

The Grounds for the Motion

4. Counsel for Honeywell argued that I should defer setting hearing dates for the following reasons:

a) the issue to be decided by the Divisional Court in the *Crook* appeal is the very issue before me in this case, and

b) the issue to be decided by the Court of Appeal in the *Essex* appeal raises similar issues and will inform and assist my determination in this case.

5. It was not disputed that the case before me raises clearly defined legal issues. I will be asked to determine whether it is discriminatory, and a breach of the Ontario *Human Rights Code* R.S.O. 1990 c. H-19, as amended (*"Code"*), to exclude women on maternity leave from entitlement to short term disability benefits.

6. Counsel for Honeywell submits that the same issues were before the Board of Inquiry in the *Crook* case and similar issues were before the arbitrator in the *Essex* case. In the result she submits that deferring this hearing will avoid the possibility of contradictory decisions and the confusion that may result thereby. Further, costs to all parties will be saved and the pending decisions may well mean that the issues before me can be resolved short of a hearing. The public interest, she submits, is furthered by not expending public funds in a hearing now when the question before me will be addressed in the next few months by the Divisional Court and in the next year by the Court of Appeal. She submits that there is no prejudice to the Complainants in this case because their complaints arose in 1990 and that the alleged violations of the *Code* are not ongoing such that intervention now is imperative.

7. Counsel for the Ontario Human Rights Commission ("Commission") and for the Complainants ask that I decline to defer the setting of hearing dates. They argue that the issues

to be addressed by the Divisional Court in *Crook* and by the Court of Appeal in *Essex* are not identical to those before me. In particular they argue that the *Essex* appeal will not interpret the provisions of the Code that are at issue before me.

8. They submit that if I were to defer setting dates until those courts have rendered their decisions I might well be faced with another such application while the "losing" parties in those cases seek leave and, if granted, appeal to the next level of court. That process, they submit, could delay the determination of the complainants' rights in these cases for years. They further submit that authorities already exist from higher level courts to guide me in my determination of the issues raised in these complaints. They say that the public interest mandate I have been given under the *Code* favours expedition of these complaints. In addition, Counsel for the Complainants argues that the delay that has already been experienced by these Complainants, should not be exacerbated by a further delay in the Board of Inquiry process.

Decision

9. I have reviewed the case law filed with me by counsel for the Respondent. The Respondent relies on a number of cases from labour arbitrators in which they regularly stay their proceedings - or hold them in abeyance - pending the outcome of other grievances or court proceedings. I found those cases helpful in their analysis of the criteria that may be relevant to consideration of a request of this sort.

10. However, labour arbitrators dealing with grievances are deciding on a dispute between two parties, the grievor and his or her union, and the employer. They do not have a public interest mandate as is accorded an adjudicator under the *Code*. Therefore while I agree that issues of costs, certainty and consistency of result, and practicality are factors which I must consider, in my view I must also weigh the public interest and the direction given to me in the *Code* to expeditiously decide the issues that are before me for hearing.

11. I adopt the reasoning of Professor Baum in *Tomen v. O.T.F. (No. 1)* (1990), 11 C.H.R.R. D/97 in which he declined to grant an adjournment pending a court decision which might well have rendered the issue before him moot. He said at page D/103:

> ...To subject the parties, including the intervenors, to adjudication before a board of inquiry surely imposes additional costs and other hardships. In my view, however, that is the price that must be paid in carrying out of the public policy of the *Code*.

I am of the same view.

12. I take further comfort in my view from the Divisional Court decision in *Tomen* in which they refused to stay the Board of Inquiry proceedings, although asked to do so, after considering the length of the stay and the fact that there was a public interest in expeditiously having the Board of Inquiry deal with the case. (*F.W.T.A.O. v. Ontario (Human Rights Commission)*, (1988), 10 C.H.R.R. D/5877 at p. D/5888)

13. I might well have considered deferring the setting of dates until release of the Divisional Court decision in *Crook,* which I am persuaded will not be a lengthy delay, had I had the assurance of the parties that they would agree to be bound by the result of that decision. I have no such assurance and because the parties in *Crook* may well appeal, I have no doubt that the delay contemplated may exceed the months suggested by counsel for Honeywell and become years.

14. In the result I decline to grant the order sought. The Deputy Registrar of the Board of Inquiry will contact the parties to set hearing dates.

Dated at Toronto this 28th day of November, 1997:

Heather M. MacNaughton
Member, Board of Inquiry